

Social Security Administration

§ 408.1004

right to judicial review, unless you can show us that there was good cause for your failure to make a timely request for review.

§ 408.1001 Definitions.

As used in this subpart:

Date you receive notice means 5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period.

Decision means the decision made by an administrative law judge or the Appeals Council.

Determination means the initial determination or the reconsidered determination.

Mass change means a State-initiated change in the level(s) of federally administered State recognition payments applicable to all recipients of such payments due, for example, to State legislative or executive action.

Preponderance of the evidence means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

Remand means to return a case for further review.

SVB, for purposes of this subpart, includes qualification for SVB, entitlement to SVB and payments of SVB.

Vacate means to set aside a previous action.

Waive means to give up a right knowingly and voluntarily.

We, us, or our refers to the Social Security Administration.

You or your refers to any person claiming or receiving SVB.

[69 FR 25955, May 10, 2004, as amended at 73 FR 76944, Dec. 18, 2008]

§ 408.1002 What is an initial determination?

Initial determinations are the determinations we make that are subject to administrative and judicial review. The initial determination will state the important facts and give the reasons for our conclusions. We will base our initial determination on the preponderance of the evidence.

[69 FR 25955, May 10, 2004, as amended at 73 FR 76944, Dec. 18, 2008]

§ 408.1003 Which administrative actions are initial determinations?

Initial determinations regarding SVB include, but are not limited to, determinations about—

- (a) Whether you qualify for SVB;
- (b) Whether you are entitled to receive SVB payments on the basis of your residence outside the United States;
- (c) The amount of your SVB payments;
- (d) Suspension or reduction of your SVB payments;
- (e) Termination of your SVB entitlement;
- (f) Whether an overpayment of benefits must be repaid to us;
- (g) Whether payments will be made, on your behalf, to a representative payee, unless you are legally incompetent;
- (h) Who will act as your payee if we determine that representative payment will be made;
- (i) A claim for benefits under § 408.351 based on alleged misinformation; and
- (j) Our calculation of the amount of change in your federally administered State recognition payment amount (*i.e.*, a reduction, suspension, or termination) which results from a mass change as defined in § 408.1001.

[69 FR 25955, May 10, 2004; 69 FR 45586, July 30, 2004]

§ 408.1004 Which administrative actions are not initial determinations?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by this subpart and they are not subject to judicial review. These actions include, but are not limited to, an action about—

- (a) Denial of a request to be made your representative payee;
- (b) Denial of your request to use the expedited appeals process;
- (c) Denial of your request to reopen a determination or a decision;
- (d) Disqualifying or suspending a person from acting as your representative in a proceeding before us;
- (e) Denial of your request to extend the time period for requesting review of a determination or a decision;

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(f) Denial of your request to readjudicate your claim and apply an Acquiescence Ruling;

(g) Declining under § 408.351(f) to make a determination on a claim for benefits based on alleged misinformation because one or more of the conditions specified in § 408.351(f) are not met;

(h) Findings on whether we can collect an overpayment by using the Federal income tax refund offset procedure. (See § 408.943).

(i) The determination to reduce, suspend, or terminate your federally administered State recognition payments due to a State-initiated mass change, as defined in § 408.1001, in the levels of such payments, except as provided in § 408.1003(h).

§ 408.1005 Will we mail you a notice of the initial determination?

(a) We will mail a written notice of the initial determination to you at your last known address. Generally, we will not send a notice if your benefits are stopped because of your death, or if the initial determination is a redetermination that your eligibility for benefits and the amount of your benefits have not changed.

(b) The notice that we send will tell you—

(1) What our initial determination is;

(2) The reasons for our determination; and

(3) What rights you have to a reconsideration of the determination.

(c) If our initial determination is that we must suspend, reduce your SVB payments or terminate your SVB entitlement, the notice will also tell you that you have a right to a reconsideration before the determination takes effect (see § 408.820).

§ 408.1006 What is the effect of an initial determination?

An initial determination is binding unless you request a reconsideration within the stated time period, or we revise the initial determination.

RECONSIDERATION

§ 408.1007 What is reconsideration?

Reconsideration is the first step in the administrative review process that

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we provide if you are dissatisfied with the initial determination. If you are dissatisfied with our reconsideration determination, you may request a hearing before an administrative law judge.

§ 408.1009 How do you request reconsideration?

(a) *When you must file your request.* We will reconsider an initial determination if you file a written request within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (c) of this section).

(b) *Where to file your request.* You can file your request for reconsideration at:

(1) Any of our offices;

(2) The Veterans Affairs Regional Office in the Philippines;

(3) An office of the Railroad Retirement Board if you have 10 or more years of service in the railroad industry; or

(4) A competent authority or agency of a country with which the United States has a totalization agreement (see § 404.1927 of this chapter).

(c) *When we will extend the time period to request a reconsideration.* If you want a reconsideration of the initial determination but do not request one within 60 days after the date you receive notice of the initial determination, you may ask us for more time to request a reconsideration. You must make your request in writing and explain why it was not filed within the stated time period. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 408.1011.

§ 408.1011 How do we determine whether you had good cause for missing the deadline to request review?

(a) In determining whether you have shown that you have good cause for missing a deadline to request review we consider—

(1) What circumstances kept you from making the request on time;

(2) Whether our action misled you;

(3) Whether you did not understand the requirements of the Act resulting